

1 WILLIAM L. LARKINS, JR. WSBA #33423
wlarkins@larkinsvacura.com
2 LARKINS VACURA, LLP
621 SW Morrison St., Suite 1450
3 Portland, Oregon 97205
Telephone: 503-222-4424
4 Facsimile: 503-827-7600

5 DAVID R. ZARO, (California State Bar # 124334)
Admitted Pro Hac Vice
dzaro@allenmatkins.com
6 YALE K. KIM (California State Bar # 188895)
Admitted Pro Hac Vice
ykim@allenmatkins.com
8 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
9 515 South Figueroa Street, Ninth Floor
Los Angeles, California 90071-3309
10 Telephone: (213) 622-5555
Facsimile: (213) 620-8816

11 Attorneys for Michael A. Grassmueck, as Receiver

12
13 UNITED STATES DISTRICT COURT

14 WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 MCS PROGRAMS, LLC, a Washington
Limited Liability Company, also doing business
19 as Mutual Consolidated Savings; UNITED
SAVINGS CENTER, INC., a Washington
20 corporation, also doing business as Mutual
Consolidated Savings; USC PROGRAMS,
21 LLC, a Washington Limited Liability
Company, also doing business as Mutual
22 Consolidated Savings; PAUL MORRIS
THOMPSON, individually and as an officer of
23 MCS Programs, LLC, United Savings Center,
Inc., and USC Programs, LLC; and MIRANDA
24 CAVENDER, individually and as a manager of
MCS Programs, LLC, United Savings Center,
25 Inc., and USC Programs, LLC,

26 Defendants.

Case No. C09 5380 RJB

MOTION FOR ORDER CLOSING CASE AND
DISCHARGING THE RECEIVER EFFECTIVE
UPON COMPLETION OF THE FINAL
CLOSING TASKS AND FOR OTHER
RELATED RELIEF AND MEMORANDUM
OF POINTS AND AUTHORITIES

[Declaration of Michael A. Grassmueck, Notice
of Motion, and Proposed Order Filed
Concurrently Herewith]

[Exhibits "1"-"4"]

Noted on Motion Calendar: May 25, 2012

1 Michael A. Grassmueck (the "Receiver"), the duly appointed receiver for MCS Programs,
2 LLC, United Savings Center, Inc., USC Programs, LLC, and their subsidiaries and affiliates and
3 any entities controlled by them (collectively referred to as the "Receivership Defendants"), hereby
4 moves this Court (the "Motion") for an order closing case and discharging the Receiver effective
5 upon completion of the below described final closing tasks and for other related relief.

6 I.

7 **INTRODUCTION**

8 By this Motion, the Receiver requests that the Court authorize the closing of the
9 receivership estate (the "Estate") and the discharge of the Receiver, effective upon (i) the transfer
10 of all Estate funds to the Federal Trade Commission redress contractor ("FTC Redress
11 Contractor") for distribution to merchants and creditors of the Estate (after payment of all
12 administrative expenses and professionals fees and costs), and (ii) the filing of the Receiver's
13 declaration confirming completion of (i) above, and attaching the final accounting for the Estate,
14 (collectively, the "Final Closing Tasks"). The Receiver estimates the completion of the Final
15 Closing Tasks in approximately 60 days from the filing of this Motion.

16 Aside from the Final Closing Tasks to be completed, the Receiver has fulfilled all his
17 duties under the Stipulated Final Judgment and Order for Permanent Injunction, entered on
18 July 19, 2010.

19 During his tenure, the Receiver has, among other things: (a) assumed control of the
20 Estate's business operations, including the credit card processing transactions for customer
21 chargebacks and deposits; (b) taken possession of the Estate's various assets, including but not
22 limited to, an office building located at 1215 Earnest S. Brazill Street, Building #33, Tacoma,
23 Washington ("Office Property"), a storage unit located at 1235 S. Sprague Ave., Space #0950,
24 Tacoma, Washington ("Storage Unit"), a mobile home located at 3011 80th Street Court S.,
25 Lakewood Washington ("Mobile Home"), a boat, a truck, a recreational vehicle, a certificate of
26 deposit, a safe deposit box, bank accounts, and business records; (c) conducted an orderly
27 termination of business operations; (d) concluded the investigations and accountings of the Estate
28 assets; (e) responded to customer inquiries concerning the credit card processing transactions; and

1 (f) liquidated all Estate assets (or otherwise abandoned those without value). With all of the
2 foregoing tasks completed, the Receiver is ready to close this case and request discharge of the
3 Receiver, effective upon completion of the Final Closing Tasks.

4 The Receiver has conferred with the Federal Trade Commission ("FTC") in regard to this
5 Motion, and the FTC has reviewed and consented to the Motion.

6 II.

7 **FACTS**

8 A. The FTC Complaint Filed Against Receivership Defendants

9 On June 25, 2009, the FTC filed a complaint ("Complaint") against the Receivership
10 Defendants, for violation of, among other things, Section 5(a) of the Federal Trade Commission
11 Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, to halt the
12 Receivership Defendants' deceptive telemarketing practices. The FTC alleged that the
13 Receivership Defendants engaged in deceptive and abusive telemarketing acts or practices.

14 The Receivership Defendants engaged in a telemarketing program known as a "rapid debt
15 reduction" program. They claimed that their financial consultants could negotiate substantial
16 interest rate reductions for customers on their credit card balances. The Receivership Defendants
17 would charge a fee ranging from \$399 to \$899 for such services. The Receivership Defendants
18 further claimed that their program would result in customers paying their debts off at a
19 substantially faster rate, without increasing their monthly payments. The FTC's investigation
20 determined that these claims were false, and filed this action to stop such deceptive and abusive
21 business practices. The FTC additionally alleged that the Receivership Defendants violated the
22 Telemarketing Sales Rule, by calling potential customers who had asked not to be called, by
23 failing to transmit the caller ID of the telemarketer, and by failing to provide required disclosures
24 at the outset of the telemarketing calls.

25 B. The *Ex Parte* Application for TRO, Asset Freeze, and Appointment of Temporary
26 Receiver

27 In conjunction with filing the Complaint, the FTC filed on June 25, 2009, an *Ex Parte*
28 Application for Temporary Restraining Order, with Asset Freeze, Appointment of Receiver, *et al.*

1 ("Ex Parte Application"). The FTC sought, among other things, a freeze of the Receivership
2 Defendants' assets to preserve for consumers any funds obtained by fraud, and the appointment of
3 a receiver over the assets. There was great concern that without such immediate relief, the
4 Receivership Defendants, and the principals that managed them, would secrete assets to off-shore
5 accounts, as they had access to accounts outside the United States.

6 On June 26, 2009, the Court granted the *Ex Parte* Application and a Temporary
7 Restraining Order was entered providing for an asset freeze of the Receivership Defendants
8 ("Asset Freeze"), and appointing Michael A. Grassmueck as temporary receiver over the
9 Receivership Defendants' assets and business operations.

10 C. Michael A. Grassmueck Appointed as Permanent Receiver over the Receivership
11 Defendants

12 On July 10, 2009, a Stipulated Preliminary Injunction and Order for Other Equitable Relief
13 was entered ("Receiver Order"), continuing the Asset Freeze and appointing Michael A.
14 Grassmueck as receiver, with the full powers and duties of a federal equity receiver. The Receiver
15 Order provided that the Receiver was granted full access and authority over all of the Receivership
16 Defendants' business premises, including any records located at the Office Property and Storage
17 Unit. The Receiver Order at Section IX.D further provided that the Receiver had the power to
18 investigate, conserve, hold, and manage all receivership assets, and perform all acts necessary or
19 advisable to preserve the value of those assets in an effort to prevent any irreparable loss, damage
20 or injury to consumers or to creditors of the Receivership Defendants.

21 D. Receivership Activities in 2009

22 In 2009, after the Receiver's appointment, the Receiver assumed control of the Estate's
23 business operations, including the credit card processing transactions for customer chargebacks
24 and deposits. The Receiver also took possession of the Estate's various assets, including but not
25 limited to, the Office Property, Storage Unit, Mobile Home, boat, truck, recreational vehicle,
26 certificate of deposit, safe deposit box, 12 bank accounts, and business records. The Receiver also
27 conducted an orderly termination of business operations including, among other things, processing
28 the final payroll for the Receivership Defendants' employees.

1 E. Receivership Activities in 2010

2 In 2010, the Receiver continued to respond to consumer issues regarding the credit card
3 transactions involving Receivership Defendants. The Receiver also began the process of
4 preparing the Estate tax returns. The Receiver continued his efforts to investigate the status of any
5 Estate assets which could be subject to recovery, and sold Estate assets including the Mobile
6 Home, boat, truck, and RV. The Receiver also seized a CD account at Bank of America which
7 held Estate funds. Finally, the Receiver coordinated with the FTC in providing critical
8 information to the FTC for its preparation of a final stipulated judgment against the Receivership
9 Defendants.

10 F. The Final Judgment

11 On July 19, 2010, the Stipulated Final Judgment and Order for Permanent Injunction was
12 entered against the Receivership Defendants ("Final Judgment"). The Final Judgment provided
13 for, among other things, entry of a money judgment for \$22,508,306 against the Receivership
14 Defendants, jointly and severally, and the release of certain Receivership Defendants' property to
15 the Receiver for liquidation. The Final Judgment at Section VII also authorized the Receiver to,
16 among other things, take the necessary steps to wind down the businesses of the Receivership
17 Defendants, locate and liquidate all Receivership Defendants' assets, marshal and take control and
18 possession of all funds, property, accounts of the Receivership Defendants, dispose of the
19 Receivership Defendants' records, perform all acts to complete an accounting of assets, and make
20 payments and disbursements from the Estate as necessary for the Receiver to carry out his duties
21 under the Final Judgment.

22 G. The Motion to Destroy Certain Receivership Estate Records and for Other Related
23 Relief

24 At the end of 2010, the Court granted the Receiver's Motion to Destroy Certain
25 Receivership Estate Records and for Other Related Relief. The Court's order authorized the
26 Receiver to destroy the business records located at the Office Property and the Storage Unit, and
27 remove other miscellaneous furniture and equipment in the Office Property which the Receiver
28 determined were of inconsequential value to the Estate.

1 H. Receivership Activities in 2011

2 During 2011, the Receiver completed and filed the Estate's tax returns. The Receiver also
 3 completed the destruction of the Estate's business records. The Receiver attempted to sell the
 4 Office Property, but eventually determined the Office Property could not be sold for more than the
 5 liens against the Office Property and elected to abandon it. On October 19, 2011, the Court
 6 granted the Receiver's Motion to Abandon Real Property and for Other Related Relief, which
 7 authorized the Receiver to abandon the Office Property.

8 III.

9 **THE COURT MAY DISCHARGE THE RECEIVER AND CLOSE THE RECEIVERSHIP**

10 **EFFECTIVE UPON COMPLETION OF THE FINAL CLOSING TASKS, AND ORDER**

11 **OTHER EQUITABLE RELIEF**

12 A. Approval to Conclude the Receivership

13 Federal district courts presiding over federal equity receiverships have broad power and
 14 wide discretion in the supervision of receiverships. *SEC v. Hardy*, 803 F.2d 1034, 1037-38 (9th
 15 Cir. 1986). Their power and discretion includes the authority to "make rules which are practicable
 16 as well as equitable." *Id.* at 1039 (*quoting First Empire Bank-New York v. FDIC*, 572 F.2d 1361,
 17 1368 (9th Cir. 1978)).

18 The Receiver was highly successful in administering the Receivership Estate, including
 19 assuming control of operations and then winding down the business operations, preparing and
 20 filing Estate tax returns, responding to and addressing all customer issues related to the credit card
 21 processing transactions, and destroying Estate records. The Receiver also completed an effective
 22 and orderly liquidation of Receivership Estate assets. As there is no further benefit to be gained
 23 from maintain the receivership, the Receiver requests that he be discharged and the case be closed,
 24 effective upon completion of the Final Closing Tasks. The Receiver requests that the Court
 25 approve all actions taken in conjunction with the Final Closing Tasks, so that the administration of
 26 this receivership may be successfully concluded.

27 The discharge releases the Receiver from (i) all duties under the Receiver Order and Final
 28 Judgment, and (ii) any and all claims and liabilities associated with the receivership, the

1 Receivership Defendants, and the individual defendants named in this action. Accordingly, the
 2 Receiver also requests that the Court use its discretion to discharge the Receiver and close this
 3 case, effective upon the conclusion of the Final Closing Tasks.

4 B. Final Fee Statements

5 As part of closing the case, the Receiver seeks approval of the Receiver and his
 6 professionals' fees and expenses as set forth in their respective final fee statements, which are
 7 attached hereto. The final fee statements cover fees and expenses for the Receiver, Allen Matkins
 8 Leck Gamble Mallory & Natsis LLP, Larkins Vacura LLP, and the Receiver's general accountant,
 9 Moss Adams (collectively, "Receiver and Professionals"). The Receiver, Allen Matkins, and
 10 Moss Adams, have also included as part of their respective statements reserves for estimated fees
 11 and expenses for services which will be incurred after the filing of the Motion through the closing
 12 of the receivership.

13 The final fee statements provide as follows:

14 Exhibit 1 – Michael A. Grassmueck, Receiver (Fees: \$53,727.50, Expenses: \$3,853.76,
 15 and Estimated Reserve for Fees and Expenses of \$4,565.00 – for a Total Award
 16 of \$62,146.26);

17 Exhibit 2 – Allen Matkins Leck Gamble Mallory & Natsis LLP (Fees: \$20,896.00,
 18 Expenses: \$93.24, and Estimated Reserve for Fees and Expenses of \$4,500.00
 19 – for a Total Award of \$25,489.24);

20 Exhibit 3 – Larkins Vacura LLP (Fees: \$1,938.00, Expenses: \$0.00 – for a Total Award of
 21 \$1,938.00); and

22 Exhibit 4 – Moss Adams (Fees: \$12,154.00 and Expenses \$2,100, and Estimated Reserve
 23 for Fees of \$2,100 -- for a Total Award of \$16,354.00)

24 Finally, in addition to the final fee statements, the Receiver seeks final approval of all fee
 25 statements previously submitted by the Receiver and all his professionals, as set forth in each of
 26 the Notices of Monthly Statements of Receiver and Professionals filed in this case (including the
 27 Final Statements). The total of the fee statements previously submitted by the Receiver and his
 28 professionals are as follows: Receiver -- \$113,582.17; Receiver's co-counsel, Allen Matkins Leck

1 Gamble Mallory & Natsis LLP -- \$55,609.75; Receiver's co-counsel Larkins Vacura LLP --
2 \$34,954.88; and Receiver's forensic accountant, Financial Forensics -- \$17,366.18.

3 Approval of the previously filed fee statements on a final basis is appropriate here since
4 there are no further administrative tasks that need to be taken. The Receiver and all his
5 professionals have effectively and efficiently administered the case and there were no objections
6 filed to any of these fee statements.

7 IV.

8 **CONCLUSION**

9 For the foregoing reasons, the Receiver respectfully requests this Court grant the relief
10 requested in the Motion, and for such other relief as the Court deems just and necessary.

11 Dated: May 1, 2012

Respectfully submitted,

12
13 /s/ Yale K. Kim

14 Yale K. Kim, Esq.
15 *Admitted Pro Hac Vice* -- CA Bar No. 188895
16 dzaro@allenmatkins.com
17 ALLEN MATKINS LECK GAMBLE
18 MALLORY & NATSIS LLP
19 515 S. Figueroa Street, 7th Floor
20 Los Angeles, California 90071-3398
21 Telephone: 213.622.5555
22 Facsimile: 213.620.8816

-and-

23 /s/ William L. Larkins, Jr.

24 William L. Larkins, Jr., Esq.
25 WSBA # 33423
26 wlarkins@larkinsvacura.com
27 LARKINS VACURA, LLP
28 621 SW Morrison St., Suite 1450
Portland, Oregon 97205
Telephone: 503.222.4424
Facsimile: 503.827.7600

Attorneys for Receiver,
Michael A. Grassmueck

CERTIFICATE OF SERVICE

I am employed in Multnomah County, State of Oregon. I am over the age of 18 and am not a party to the within action; my business address is 621 SW Morrison St., Suite 1450, Portland, Oregon 97205.

On May 2, 2012, I served the following document(s) described as:

MOTION FOR ORDER CLOSING CASE AND DISCHARGING THE RECEIVER EFFECTIVE UPON COMPLETION OF THE FINAL CLOSING TASKS AND FOR OTHER RELATED RELIEF AND MEMORANDUM OF POINTS AND AUTHORITIES

on the interested parties in this action in the following manner(s):

BY REGULAR MAIL: I placed copies of the document in sealed envelopes and caused such envelopes to be deposited in the United States mail at Portland, Oregon, with postage thereon fully prepaid and addressed as stated on the attached service list.

BY HAND DELIVERY: I placed copies of the document in sealed envelopes and caused such envelopes to be delivered by messenger to the addresses as stated on the attached service list.

BY FACSIMILE: I served the document by facsimile to the facsimile numbers stated on the attached service list provided by each party and/or attorney of record.

OTHER: I served the document by using the CM/ECF system which will send notification to the email address stated on the attached service list provided by each party and/or attorney of record.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

/s/ William L. Larkins, Jr.

William L. Larkins, Jr.

Maxine R. Stansell (by CM/ECF)
Federal Trade Commission
915 2nd Avenue, Suite 2896
Seattle, WA 98174
Email: mstansell@ftc.gov
Attorney for plaintiff Federal Trade Commission

Hector Enrique Lora (by CM/ECF)
Cove & Associates P.A.
Florida
225 South 21 Avenue
Hollywood, FL 33020
Email: hel@covelaw.com
Attorney for defendants MCS Programs, LLC, United Savings Center, Inc.
USC Programs LLC, Paul Morris Thompson

John Matthew Ennis (by regular mail)
6314 S. 19th Street
College Park, Suite 12
Tacoma, WA 98466
Attorney for defendants MCS Programs, LLC, United Savings Center, Inc.
USC Programs LLC, Paul Morris Thompson

Miranda Cavender (by regular mail)
1639 S. 96th Street
Tacoma, WA 98444
Pro Se